CARRIERS—EVIDENCE—BURDEN OF SHOWING NEGLIGENCE ON SHIPPER.—An action was brought for damages due to an unreasonable delay in the delivery of a shipment of stock. The trial court proceeded upon the theory that the plaintiff had made a *prima facie* case by showing a failure on the part of the defendant to transport the cattle within a reasonable time, and that the defendant had the burden of showing that the delay was not due to negligence if he were to escape liability. *Held,* the plaintiff had the burden of proving that the delay was due to negligence. *Bland* v. *Chicago, etc., Ry. Co.* (Mo., 1921), 232 S. W. 232.

Whether the burden of proving negligence is upon the carrier or the shipper is a question upon which the courts are in conflict. The weight of authority holds that the burden is upon the shipper. *Railroad* v. *Reeves,* 10 Wall. 176; *Cochran* v. *Dinsmore,* 49 N. Y. 249; see 3 HUTCHINSON ON CARRIERS (Ed. 3), p. 1599, and cases there cited. These cases proceed upon the theory that he who bases his cause of action upon negligence must prove it. The weight of reason, however, seems to be with the minority cases which hold that the shipper by showing a failure to comply with the contract makes a *prima facie* case, and the carrier to escape liability must prove that he was not negligent. *Berry* v. *Cooper,* 28 Ga. 543; *Hinkle* v. *Railway Co.,* 126 N. C. 932; *Chicago, etc., Ry. Co.* v. *Moss,* 60 Miss. 1003. The minority cases proceed upon the theory, first, that the contract of carriage holds the carrier liable unless the damage resulted from one of the excepted causes, and was not due to negligence. Hence, a complete defense requires the carrier not only to bring himself within the exemption, but also to prove no negligence on his part. Secondly, that negligence being a matter peculiarly within the knowledge of the carrier, public policy requires that he should have the burden of showing that he was free from negligence. The court in *Chicago, etc., Ry. Co.* v. *Moss, supra,* said: "In a large majority of cases the witnesses are the employees whose negligence has caused the loss, and even if known to the shipper, it may be dangerous for him to rest his case upon their testimony, since the natural inclinations of mankind would sway them, in narrating the circumstances, to palliate their fault by stating the occurrence in the most favorable light to themselves." Though the carrier is not an insurer against delay, and the plaintiff's cause of action in the principal case is founded solely upon negligence, yet the same public policy which induces the minority cases to place the burden as to negligence on the carrier, where loss or damage is involved, also requires that the carrier have that burden when the action is founded upon delay. To do otherwise would in many cases deny the shipper all redress, yet the principal case adopts such a rule.

CARRIERS—TERMINATION OF LIABILITY AS CARRIER AFTER ACCEPTANCE BY CONSIGNEE—UNIFORM BILL OF LADING.—The plaintiff was the consignee of a carload of goods under a uniform bill of lading which provides: "Property not removed by the party entitled to receive it, within 48 hours, exclusive of legal holidays, after notice of its arrival has been duly sent or given, may be kept in car, depot, or place of delivery of the carrier subject to a reason-

able charge for storage and to carrier's responsibility as warehouseman only," etc. A half hour after receiving due notice of the car's arrival and its placement on a public delivery track the plaintiff accepted the car, broke the seals thereon and began to unload it. During the time the plaintiff was unloading (from 9:30 a. m. to 6:00 p. m.) part of the goods were stolen from the car. *Held* (McReynolds, J., dissenting), the defendant is liable for the loss of the goods stolen. *Michigan Cent. R. Co.* v. *Mark Owen & Co.* (1921), 41 Sup. Ct. 554.

The court held that by necessary implication from the provisions in the bill of lading the liability of the carrier was to attach to goods "not removed from the car" until the time when the liability as warehouseman should begin. The same construction was put upon this section of the bill of lading in *Gary Bros. & Gaffke Co.* v. *Chicago, M. & P. S. Ry. Co.*, 49 Mont. 524, where the facts show entrance and inspection but not acceptance by the consignee. There the court said: "* * * the only thing which will exonerate the carrier as such, within 48 hours, is the removal of the property. In other words, the contract itself not only fixes the liability of the carrier, as such, but defines the character of the delivery which will suffice to avoid it." In *McEntire* v. *Chicago, R. I. & P. Ry. Co.*, 98 Neb. 92, 828, where the consignee of goods under a similar bill of lading opened the car and without removing any of the contents put a lock of his own upon it, the court held there was a delivery terminating the railroad's liability as carrier. Here the lock was only symbolic of possession and gave to the consignee less control than that actually possessed by the consignee in the principal case. In answer to the plaintiff's contention that the shipping contract placed an absolute liability upon the railroad as carrier during the 48 hours after notice until delivery by removal from the car, the court said: "But we do not believe the contract susceptible of this construction. A more reasonable construction seems to be that property not removed by the consignee within 48 hours after notice of its arrival may be left in the car subject to a reasonable charge for storage, and that the liability of the carrier shall be that of warehouseman only." In *Mark Owen & Co.* v. *Michigan Cent. R. Co.*, 214 Ill. App. 94, whence this case was appealed, the court held that the bill of lading was to be construed most strongly against the carrier because the carrier was its author, *Texas & P. R. Co.* v. *Reiss*, 183 U. S. 621, but both carriers and shippers, with some reluctance, accepted the uniform bill of lading now in use in an agreement under the guidance of the Interstate Commerce Commission. Moreover, delivery to the proper party terminates a railroad's liability as carrier. 10 C. J. 247. Regarding this point, the court in the principal case said: "The property here was not delivered; access was only given to it that it might be removed, and 48 hours were given for that purpose. Pending that time it was within the custody of the railroad company, the company having the same relation to it that the company acquired by its receipt and had during its transportation." Other courts hold the contrary. In *Rothchild Bros.* v. *Northern P. R. Co.*, 68 Wash. 27, 40 L. R. A. (n. s.) 773, the court held: "Not only had the bill of lading been surrendered and the car spotted upon the defendant's (the railroad company's) delivery

tracks for delivery before the fire occurred, but the plaintiff's agents had actually reached the car with teams, had broken the seal of the car, and had opened and entered it for the purpose of removing the property. This clearly constitutes a delivery. There was not only a surrender of the right of possession of the property by the defendant, but there was an actual taking of the property by the plaintiff. Delivery could not have been more complete had the wagons been actually loaded and started on their way to the plaintiff's warehouse." In *Kenny Co.* v. *Atlanta & W. P. R. Co.*, 122 Ga. 365, where the facts were similar to those of the principal case except that the consignee had also given a receipt in full, the court held that there had been a delivery to the consignee and that the defendant, whose servants had subsequently closed and sealed the car for the night, had only the duty of a gratuitous bailee. Accord, *Denver & R. G. R. Co.* v. *Johnson*, 69 Colo. 252. See also *Ford* v. *American Express Co. et al.*, 203 Ill. App. 275. It would seem that the consignee, and not the railroad, had actual custody and possession of the goods when the loss occurred. The extraordinary liability of the carrier arose primarily because of the opportunity for fraud by the carrier, *Coggs* v. *Bernard*, 2 Ld. Raym.909, but after the consignee has entered the car and begun to unload it the opportunity for fraud shifts from the carrier to the consignee. The court's decision practically requires the carrier to station a watchman at each car while the consignee is unloading it. The decision increases the likelihood of carelessness and dishonesty on the part of those engaged in unloading freight and tends to promote less efficient action by the consignee in removing goods from the cars. In view of these considerations it is doubtful whether the Interstate Commerce Commission intended the uniform bill of lading, which it sponsored, to impose such a burden upon the carriers, and still more doubtful that public policy can justify it. The principal case is cited and approved in *Del Signore* v. *Payne* (W. Va., 1921), 109 S. E. 232.

CONSTITUTIONAL LAW—RESTRICTIONS ON USE OF STATE MONEYS AND CREDIT—SOLDIERS' BONUS LAW.—The legislature of New York passed a Soldiers' Bonus Act which was approved by a majority of the voters of the state. (Laws of 1920, c. 872.) The act provided for the issue of bonds by the state, the proceeds to be given as a bonus to those who served honorably in the military or naval service of the United States at any time during the war, and who were, at the time of entering the service and at the time the act took effect, residents of the state. The constitution of the state provides: "The credit of the state shall not in any matter be given or loaned to or in aid of any individual, association or corporation," Art. 7, §1; "Neither the credit nor the money of the state shall be given or loaned to or in aid of any association, corporation or private undertaking," Art. 8, §9. *Held* (Cardozo and Pound, JJ., dissenting), under these provisions the act is unconstitutional. *People* v. *Westchester County Nat. Bank* (Ct. of App. N. Y., 1921), 132 N. E. 241.

The court first pointed out that, in the absence of constitutional restric-